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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 DOROTHY H. PEARCE,

8 Plaintiff,

9 vs.

10 SPLENDID PRODUCTS, LLC., a California
11 company,

12 Defendant

NO.

COMPLAINT FOR PERSONAL
INJURY DAMAGES

13
14 Comes now the Plaintiff DOROTHY H. PEARCE, through and by her attorneys Marler
15 Clark, and for causes of action does hereby complain and allege as follows:

16 **I PARTIES**

17 1. Plaintiff Dorothy Pearce is an elderly widow residing in Stanwood, Snohomish
18 County, Washington.

19 2. Defendant Splendid Products, LLC. ("Splendid Products") is a California company
20 with its principle offices in Burlingame, California. Its principle business is the manufacture, sale,
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COMPLAINT FOR PERSONAL INJURY DAMAGES - 1

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1 and nationwide distribution of food products, including mangoes. Splendid Products does business
2 in Snohomish County and the State of Washington, and is subject to the jurisdiction of this court.

3 **II JURISDICTION AND VENUE**

4 3. This Court is vested with jurisdiction of this action pursuant to 28 USC §1332(a).
5 The matter is between citizens of different states, and the matter in controversy exceeds the sum or
6 value of \$75,000.00.

7 4. Venue is proper in this Court pursuant to 28 USC §1391(a). This action is being
8 brought where the defendant, a corporation, is subject to personal jurisdiction and is therefore
9 deemed to reside, pursuant to 28 USC §1391(c), and where a substantial part of the events or
10 omissions giving rise to the claim occurred.

11 **III GENERAL ALLEGATIONS**

12 5. As of August 30, 2012, the U.S. Food and Drug Administration was working with
13 the Centers for Disease Control and Prevention (CDC), state officials, and Canadian public health
14 and food safety agencies to investigate a multistate cluster of 103 *Salmonella* Braenderup
15 infections. The California Department of Public Health reported the majority of the cases (73) in
16 the U.S. and was leading the investigation. Mangoes are the source for the illnesses in the United
17 States.

18 6. An importer in Canada initiated a voluntary recall of Daniella brand mangoes in that
19 country as the result of illnesses reported there. In response to the Canadian Food Inspection
20 Agency's recall warning, and as a precautionary and voluntary measure, some distributors of
21

1 Daniella brand mangoes to the U.S. began to notify their customers in their distribution chains to
2 remove this product from the marketplace in the United States.

3 7. As a result of those notifications and the illnesses reported in Canada, defendant
4 Splendid Products on August 29, 2012 voluntarily recalled Daniella mangoes it distributed in the
5 United States, and several U.S. retailers and food manufacturers began related recalls.

6 8. The recalled Daniella mangoes were packed in Mexico, distributed by Splendid
7 Products and sold between July 12, 2012 and August 29, 2012 at various stores throughout the
8 United States, including stores in Snohomish County, Washington. The mangoes were sold as
9 individual fruit with the sticker brand "Daniella." Each fruit was also marked with a small sticker
10 with one of the following codes: 4051, 4959, 4311, 4584 or 3114.

11 9. The Mexican manufacturer and producer of the Daniella brand mangoes has not yet
12 been identified.

13 10. Most people infected with *Salmonella* develop diarrhea, fever, and abdominal
14 cramps 12 to 72 hours after infection. The illness usually lasts 4 to 7 days, and most people recover
15 without treatment. However, in some people, the diarrhea may be so severe that the patient needs
16 to be hospitalized. In these patients, the *Salmonella* infection may spread from the intestines to the
17 blood stream, and then to other body sites and can cause death unless the person is treated promptly
18 with antibiotics. Young children, the elderly, and those with compromised immune systems are the
19 most likely to have severe infections. It is estimated that approximately 400 persons die each year
20 with acute salmonellosis.

11. In late August, 2012, plaintiff Dorothy Pearce consumed a *Salmonella*-contaminated Daniella brand mango that had been purchased at a store in Stanwood. The contaminated mango had been manufactured, distributed and sold by defendant Splendid Products.

12. Ms. Pearce first became ill on or about August 20, 2012. By the next day, she was suffering from a variety of symptoms, including nausea, vomiting, diarrhea, and stomach cramps. On August 22, 2012, Ms. Pearce was admitted to Providence Hospital, in Everett, Washington, where she is still hospitalized. Lab tests confirm that Ms. Pearce's *Salmonella* serotype was *Salmonella* Braenderup, the serotype associated with the Daniella mango outbreak.

13. As a result of her *Salmonella*-induced illness, Ms. Pearce has suffered severe injuries, severe emotional injuries, and substantial economic loss.

IV. FIRST CLAIM FOR RELIEF

(Strict Product Liability)

14. At all times relevant to this action, the defendant was a manufacturer, seller and distributor of the *Salmonella* contaminated mango food product that caused the plaintiff's injuries.

15. The *Salmonella* contaminated mango food product that the defendant manufactured, distributed, and sold was, at the time it left the control of the defendant, defective because it contained *Salmonella*, a potentially lethal pathogen, and was thus in a condition not contemplated by the ultimate consumer.

16. The defective condition of the *Salmonella* contaminated mango that the defendant manufactured, distributed, and sold caused the mango to be unreasonably dangerous because the

1 product posed a risk beyond that an ordinary consumer would not contemplate when purchasing
2 the product.

3 17. The *Salmonella* contaminated mango that the defendant manufactured, distributed,
4 and sold was delivered to the plaintiff without any change in its defective condition. The
5 adulterated mango food product that the defendant manufactured, distributed, and sold was used in
6 the manner expected and intended, and was consumed by the plaintiff.

7 18. As a direct and proximate result of the defendant's manufacture, distribution and
8 sale of *Salmonella* contaminated mango, the plaintiff was infected with *Salmonella*, causing her to
9 suffer substantial economic damages. Plaintiff is thus entitled to an award for lost medical and
10 medically-related expenses, both past and future, in a final amount to be determined at trial.

11 19. As a further direct and proximate result of the defendant's manufacture, distribution
12 and sale of *Salmonella* contaminated mango, the plaintiff has suffered non-economic damages,
13 including, but not limited to: damages for general pain and suffering; damages for loss of
14 enjoyment of life, both past and future; emotional distress, and future emotional distress; lost
15 familial consortium; and all other ordinary, incidental and consequential non-economic damages as
16 would be anticipated to arise under the circumstances, and she is thus entitled to an award of non-
17 economic damages in a final amount to be determined at trial.

18 **V. SECOND CLAIM FOR RELIEF**

19 (Breach of Warranty)

20 20. The defendant is liable to the plaintiff for breaching express and implied warranties
21 that they made regarding the *Salmonella* contaminated adulterated mango product that caused the

1 plaintiff's injuries. These express and implied warranties included the implied warranties of
2 merchantability and/or fitness for a particular use. Specifically, the defendant expressly warranted,
3 through its sale of the mango product to the public and by the statements and conduct of its
4 employees and agents, that the mango product it sold and distributed was fit for human
5 consumption and not otherwise adulterated or injurious to health.

6 21. The *Salmonella* contaminated mango that caused the plaintiff's injuries would not
7 pass without exception in the trade, and the sale of that contaminated mango food product was
8 therefore in breach of the implied warranty of merchantability.

9 22. The *Salmonella* contaminated food that caused the plaintiff's injuries was not fit for
10 the uses and purposes intended, *i.e.* human consumption, and the sale of that contaminated mango
11 food product was therefore in breach of the implied warranty of fitness for its intended use.

12 23. As a direct and proximate result of the defendant's breach of express and implied
13 warranties regarding the contaminated mango product, the plaintiff was infected with *Salmonella*,
14 causing her to suffer substantial economic damages. Plaintiff is thus entitled to an award for lost
15 medical and medically-related expenses, both past and future, in a final amount to be determined at
16 trial.

17 24. As a further direct and proximate result of the defendant's breach of express and
18 implied warranties regarding the contaminated mango, the plaintiff has suffered non-economic
19 damages, including, but not limited to: damages for general pain and suffering; damages for loss of
20 enjoyment of life, both past and future; emotional distress, and future emotional distress; lost
21 familial consortium; and all other ordinary, incidental and consequential non-economic damages as

1 would be anticipated to arise under the circumstances, and she is thus entitled to an award of non-
2 economic damages in a final amount to be determined at trial.

3 **VI. THIRD CLAIM FOR RELIEF**

4 (Personal Injury - Negligence)

5 25. The defendant owed to the plaintiff a duty to use reasonable care in the
6 manufacture, distribution, and sale of its mango food product, the observance of which duty would
7 have prevented or eliminated the risk that the defendant's food product would become
8 contaminated with *Salmonella* or any other dangerous pathogen. The defendant breached this duty
9 by failing to exercise reasonable care in the manufacture, distribution and sale of the mango
10 product.

11 26. The defendant had a duty to properly supervise, train, and monitor its employees,
12 and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety
13 codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but the
14 defendant failed to do so. Defendant failed to properly supervise, train, and monitor its employees,
15 and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety
16 codes pertaining to the manufacture, distribution, storage, and sale of its mango food product, and
17 was therefore negligent.

18 27. The defendant had a duty to use ingredients, supplies, and other constituent
19 materials that were reasonably safe, wholesome, free of defects, from reliable sources, and that
20 otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and
21 that were clean, free from adulteration, and safe for human consumption, but the defendant failed

1 to do so. Defendant failed to use ingredients, supplies, and other constituent materials that were
2 reasonably safe, wholesome, free of defects, from reliable sources, and that otherwise complied
3 with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free
4 from adulteration, and safe for human consumption, in its manufacture, distribution and sale of the
5 mango food product, and was therefore negligent.

6 28. The defendant had a duty to comply with all applicable state and federal regulations
7 intended to ensure the purity and safety of its food product, including the requirements of the
8 Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), and the Washington adulterated
9 food statutes. The defendant failed to comply with the provisions of the health and safety acts
10 identified above, by manufacturing, distributing and selling a mango food product which was
11 contaminated with *Salmonella*, a deadly pathogen, and, as a result, was negligent *per se* in its
12 manufacture, distribution, and sale of the adulterated food product.

13 29. The defendant had a duty to comply with all statutes, laws, regulations, or safety
14 codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to
15 do so. Defendant failed to comply with statutes, laws, regulations and safety codes pertaining to
16 the manufacture, distribution, storage and sale of mango food products, and was therefore
17 negligent. The plaintiff was among the class of persons designed to be protected by these statutes,
18 laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and
19 sale of similar mango food products.

20 30. As a direct and proximate result of the defendant's negligence, the plaintiff was
21 infected with *Salmonella*, causing her to suffer substantial economic damages. Plaintiff is thus

1 entitled to an award for lost medical and medically-related expenses, both past and future, in a final
2 amount to be determined at trial.

3 31. As a further direct and proximate result of the defendant's negligence, the plaintiff
4 has suffered non-economic damages, including, but not limited to: damages for general pain and
5 suffering; damages for loss of enjoyment of life, both past and future; emotional distress, and
6 future emotional distress; lost familial consortium; and all other ordinary, incidental and
7 consequential non-economic damages as would be anticipated to arise under the circumstances,
8 and she is thus entitled to an award of non-economic damages in a final amount to be determined at
9 trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the plaintiff prays for the following relief:

12 1. For all of plaintiff's economic damages, including all past and future medical
13 expenses, as determined at the time of trial.

14 2. For all of plaintiff's non-economic damages, as determined at the time of trial.

15 3. That the Court award the plaintiff the opportunity to amend or modify the
16 provisions of this complaint as necessary or appropriate after additional or further discovery is
17 completed in this matter, and after all appropriate parties have been served; and

18 4. That the Court award all such other and further relief as it deems necessary and
19 proper in the circumstances.
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1 DATED this 5th day of September, 2012.

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3 MARLER CLARK

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